

UK IN A
CHANGING
EUROPE

BRIEFING



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UK-EU DIVERGENCE TRACKER

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- UK in a Changing Europe's latest 'UK-EU Divergence Tracker' identifies a number of legislative developments over the autumn of 2023 which Rishi Sunak may seek to chalk up as symbolic Brexit 'wins' before the next election.
- Bills are in train to ban the export of live animals for fattening and slaughter and to amend the UK's GDPR regime, while secondary legislation has been used to amend the EU-imposed working time regulations and cap on bankers' bonuses.
- While these all represent changes to totemic pieces of EU legislation, they are likely to have limited impact in practice. The reforms are in many cases watered down versions of more ambitious proposals – but which have the advantage of being easier to complete before the next election.
- The changes to GDPR are largely technical and represent limited divergence from EU standards (though it could still be enough for the EU to remove its data adequacy decision for the UK – at major cost to the UK services sector). The changes to working time and animal welfare rules are to a significant degree cases of updating the law to reflect existing practices, with more ambitious reforms being put aside.
- The impact of the removal of the bankers' bonus cap is also highly contested. Government argues that it will reduce fixed costs for banks – with a greater proportion of pay linked to performance-related bonuses. But bankers are not obliged to – and very unlikely to accept – lower salaries for higher bonuses.
- In contrast to the UK, the EU has brought forward some notable measures to increase the burden on businesses in the name of upholding labour and environmental protections.
- The Platform Workers Directive could reclassify millions of digital platforms workers (like Deliveroo riders and Uber drivers) as employees rather than self-employed – entitling them to new social protections, though whether this will be completed before the EU elections is uncertain.
- Meanwhile, four new reforms – on products made with forced labour; corporate sustainability due diligence; sustainable product 'ecodesign'; and sustainable packaging – will all force companies to take on new responsibilities for the environmental and ethical footprints of their products.
- This could also have a significant impact on British businesses, which will have to adapt to these new rules (which can entail significant new administrative costs or the changing of supply chains or production processes) in order to maintain access to the EU market.
- There are also a number of cases of the UK seeking to minimise divergence from the EU. EU principles on VAT and excise duty law – which would otherwise have lapsed under the Retained EU Law Act – are being retained to prevent the risk of government being re-litigated by companies. A planned UK Carbon Border Adjustment Mechanism (CBAM), similar in design to EU's, is also being introduced to reduce the risk of carbon-intensive goods being dumped in the UK once the EU CBAM takes full effect.
- The UK and EU have also jointly agreed to extend the TCA's grace period on rules of origin for electric vehicles by three years; and the UK has introduced simplified immigration rules for French school groups.
- As often, UK-EU divergence throws up lots of issues specific to Northern Ireland, which continues to follow a range of EU rules under the Windsor Framework. The UK's CBAM and Electronic Travel Authorisation could create new complications at the Irish border, while new EU regulations on packaging, ecodesign, supply chain due diligence and glyphosate could all cause GB-NI trade disruption.